shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Dated: June 9, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–14499 Filed 6–15–94; 8:45 am]

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federal register

Thursday
June 16, 1994

Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 417
Local Labor Organization Officers; Procedure for Removal; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 417

RIN 1294–AA10

Procedure for Removal of Local Labor Organization Officers

AGENCY: Office of Labor-Management Standards, Office of the American Workplace, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is proposing to amend the regulation pertaining to the procedure for removal of local labor organization officers pursuant to section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). Section 417.16 presently gives the Secretary of Labor the authority to bring suit against a union after a member has filed a complaint with the Secretary alleging that the local labor organization has failed to follow the officer removal procedures contained in the organization's constitution and bylaws. This proposed rule deletes that language, which purports to give the Secretary general authority to bring suit against a union for failing to follow its officer removal procedures even if the inadequacy of the procedure has not been established. This change will bring the regulation into conformity with a court of appeals decision that held that the Secretary lacks such authority.

DATES: Interested parties may submit written comments on this proposal. All comments must be submitted by August 15, 1994.

ADDRESSES: Written comments should be submitted to Edmundo Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210; (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), governs the election and removal of labor organization officers. Section 401(h) of the LMRDA (29 U.S.C. 481(h)) provides that if the Secretary of Labor, upon application of a member of a local labor organization, finds after a hearing in accordance with the Administrative Procedure Act, that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The Department has interpreted section 401(h), when read in conjunction with section 402(a), as additionally granting the Secretary of Labor the authority to file suit against a union for failure to follow removal procedures whose adequacy has not been challenged. Section 402(a) states in part that "(a) a member of a labor organization: (1) Who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (*including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers*) (emphasis added) * * *." Subpart B of 29 CFR part 417 implements this interpretation.

In *Donovan* v. *Hotel, Motel & Restaurant Employees Local 19*, 700 F.2d 539 (9th Cir. 1983), however, the court held, after examining the legislative history of the Act, that the LMRDA does not authorize the Secretary to bring civil action against a union for failure to follow its concededly adequate officer removal procedure. *Local 19* rejected the Secretary's reliance on section 402(a) as a basis for extending his authority under section 401(h) to intervene in officer removal proceedings where an adequate removal procedure exists. The court concluded that those regulations found in subpart B of 29 CFR part 417 which purport to give the Secretary general authority to intervene in union affairs upon a finding that a union has failed to follow its adequate removal procedures are void for lack of statutory authority.

Local 19 is the only judicial decision that addresses this issue, and the Department has determined, upon review, that the holding of the court in *Local 19* is correct. The Department therefore proposes to delete the language in subpart B of 29 CFR part 417 granting the Secretary authority to file suit against a union for failure to follow its adequate officer removal procedures.

Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule, if issued, will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The proposed rule will only apply to local labor organizations and would decrease the regulation of such labor organizations. However, the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, the Paperwork Reduction Act of 1980, as amended, is not applicable.

List of Subjects in 29 CFR Part 417

Labor unions

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor proposes that subpart B of part 417 of title 29, Code of Federal Regulations, be amended as follows:

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

In the authority citation for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary Order No. 2–93 (58 FR 42578).

2. The heading part 417, subpart B, is revised to read as follows:

Subpart B—Procedures Upon Failure of Union to Act Following Subpart A Procedures

3. 29 CFR 417.16 is revised to read as follows:

§ 417.16 Initiation of proceedings.

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to Subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Director in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization: (1) Has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Director, or (3) has violated the principles governing adequate removal procedures under § 417.2(b)

(b) The complaint must be field pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met: (1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or (2) the member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

Signed in Washington, DC this 9th day of June, 1994.

Martin Manley,

Assistant Secretary for the American Workplace.

[FR Doc. 94–14541 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part VII

Department of Education

34 CFR Part 386

Rehabilitation Training: Rehabilitation Long-Term Training; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 386

RIN 1820–AB21

Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants for long-term training to implement the Rehabilitation Act Amendments of 1992 and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994. The Rehabilitation Long-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended (the Act). The purpose of this discretionary grant program is to fund projects to provide academic training in areas of personnel shortages identified by the Secretary.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement changes made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569) and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218). These amendments direct the Secretary to issue regulations, as appropriate, to carry out the provisions of the Rehabilitation Act of 1973, as amended.

This program supports the National Education Goal that, by the year 2000, every adult American be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

On October 8, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Rehabilitation Long-Term Training program in the **Federal Register** (58 FR 52606). The major issues related to this program are discussed in the preamble to the NPRM. Significant changes resulting from public comment since publication of the NPRM include—(1) A waiver provision for part of the non-Federal share of the cost of a project if an applicant demonstrates that it does not have sufficient resources for the entire match; (2) An exemption for existing projects from the requirement to direct 75 percent of the total award to scholarships; and (3) A broadening of the term "deaf" to include individuals who are "hard of hearing" and of the term "blind" to include individuals who have "vision impairment."

In addition, after the NPRM was published, the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218) was enacted. Those amendments included a technical change to the Rehabilitation Act of 1973, as amended, in the area of rehabilitation training. That statutory change has been incorporated into these regulations by adding the use, applications, and benefits of assistive technology devices and assistive technology services to the list of areas of personnel shortages identified in § 386.1.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 386 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

General Comments

Intent of Change in Long-Term Training Regulations

Comment: A commenter expressed the opinion that since university programs have long been addressed in the long-term category, the change in regulations appears to be intended to eliminate any training that results in less than an academic degree.

Discussion: Approximately 70 percent of grants under the Rehabilitation Long-Term Training program are currently for academic training. The 30 percent that are non-academic are concentrated in several areas: Administration, prosthetics and orthotics, community rehabilitation personnel, mental illness, independent living, client assistance program, supported employment, and deafness. The intent is not to eliminate any training for less than an academic degree, but to clarify and focus the specific mission of each training authority to improve program management. Regulations that accurately reflect the program purpose of providing academic training in areas of personnel shortages identified by the Secretary permit targeted allocations of funds to specific personnel needs, facilitate pertinent outcome measures, and ensure that administrative requirements relating to proposal evaluations, scholarships, recordkeeping, matching, and reporting are appropriate.

Changes: None.

Insufficient Public Input in the Regulations Development Process

Comments: There were a number of comments stating that the proposed regulations were developed without participation of the rehabilitation field.

Discussion: The Secretary agrees that open and extensive public participation strengthens the regulations process. In fact, extensive public input was obtained when the Rehabilitation Services Administration (RSA) convened a public meeting on rehabilitation training and published a notice requesting written public comments in May 1991. Comments received provided useful information that was considered in crafting the regulations. Also, training meetings were held throughout the United States in 1993 on the Rehabilitation Act Amendments.

Changes: None.

The Department Should Conduct a Needs Assessment Before Enacting New Regulations That Reduce or Eliminate Post-Employment Training for Rehabilitation Personnel

Comments: Most of the comments calling for needs assessments were from direct service providers who were concerned that the academic program emphasis in the Rehabilitation Long-Term Training program would reduce or eliminate crucial training for current service delivery personnel.

Discussion: The Department has conducted needs assessments of the training needs of personnel providing vocational rehabilitation services to individuals with disabilities since 1983 and will continue to do so in the future, as the authorizing statute requires it.

Changes: None.

Funding Post-Employment Training if Long-Term Training Regulations Are Enacted

Comments: A number of commenters expressed concern that there appears to be no money to provide post-employment training under training authorities other than long-term training. Commenters requested that, if the Rehabilitation Long-Term Training program is to be substantially changed, new regional networks of community-based continuing education units be established. These units would be similar to the Rehabilitation Continuing Education Programs and would be focused on individuals at the front lines of service delivery. Several commenters suggested that separate regulations could be developed for university and non-university grant recipients.

Discussion: The Secretary agrees that post-employment training needs of community rehabilitation training providers should be addressed, in part, by a network of regional continuing education programs. The Secretary annually allocates funds to address personnel shortages of qualified rehabilitation personnel. These funds are targeted to address training needs by professional discipline and rehabilitation jobs. The Secretary submits an annual report to the Congress containing and justifying rehabilitation training allocations in detail. The Secretary has authority to allocate funds from the long-term training area to continuing education or other short-term or specialized training for post-employment training of community rehabilitation personnel.

Changes: None.

Specific Comments by Section

The Program Purpose of Rehabilitation Long-Term Training (§§ 386.1 and 386.20(g)(2)

Comments: A number of commenters supported inclusion of academic training as the primary purpose of the Rehabilitation Long-Term Training program. They stated that the emphasis on academic outcomes is consistent with the requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments) to the Rehabilitation Act, which stress the use of "qualified" personnel. However, a number of other commenters asked about the statutory authority for funding only academic programs and excluding continuing education programs under the Rehabilitation Long-Term Training program. These commenters argued that there is no justification in the Rehabilitation Act for stating that the purpose of RSA's Long-Term Training program is to provide "academic" training.

Discussion: Section 302 of the Rehabilitation Act, as amended, is the statutory basis for the rehabilitation training programs. Except for the in-service training program, which now is included in the Act, the specific rehabilitation training programs, including the Rehabilitation Long-Term Training program, are established in regulations issued by the Secretary based on the statutory authority in section 302. The Secretary establishes programs so that each has a specific mission defined in regulations with appropriate outcome measures. The Secretary believes that the long-term training program should be focused on academic training.

Changes: None

Client Assistance Program (CAP) (§ 386.1)

Comments: Several commenters observed that preparation for employment in client assistance programs is not currently offered in academic training settings and that CAP training should continue to be provided under long-term training.

Discussion: The Secretary agrees that no current academic training exists for preparing individuals to work in client assistance programs and that there is a demonstrated need for continued post-employment training of CAP personnel. Existing CAP training projects will continue to be funded until their current grant periods end. The Secretary plans to invite future applications for CAP training under the provisions in section 302 of the Act and in the general regulations for Rehabilitation Training in 34 CFR part 385. Future CAP training notices will be targeted to specific needs for training and technical assistance and published for public comment before applications are solicited.

Changes: None.

Fields of Study Under the Rehabilitation Long-Term Training Program (§ 386.1)

Comments: Several commenters suggested revisions in the listing of fields of study to conform with the listing of fields of study in section 302(b)(1)(B) of the Rehabilitation Act and to include additional, specific fields, such as vision therapy and rehabilitation computer systems.

Discussion: The listing of fields in the Rehabilitation Act does not provide enough detail. For example, a specific category is needed for the Secretary to target training resources for the preparation of specialized personnel for individuals who are blind or have vision impairment. The list of 30 areas established in regulations builds upon the listing in the Act by using areas that have been included in past long-term training competitions because they are areas where needs assessments show continuing needs. The Secretary has the authority under § 386.1(b)(30) of the regulations to invite applications in other fields, such as vision therapy and rehabilitation computer systems, contributing to the rehabilitation of individuals with disabilities. Also, the Experimental and Innovative Training program (34 CFR part 387) offers opportunities for submittal of proposals to develop new types of training programs for rehabilitation personnel.

Changes: None.

Use of the Term "Blind" and the Term "Deaf" (§ 386.1)

Comments: One commenter suggested that the term "blind" be eliminated because it connotes the absence of vision, and the vast majority of individuals who are targeted for rehabilitation under this category have residual vision (i.e., are partially sighted). Another commenter suggested substituting a broader category that would include blind individuals as well as other individuals with visual impairment. One Commenter suggested elimination of the term "deaf" as it connotes the absence of hearing, and many individuals served under the Rehabilitation Act have partial hearing loss. The commenter suggested use of a more inclusive phrase, such as persons with hearing loss.

Discussion: The Secretary agrees that a change is needed in the identification of these categories of training. In the past, the Act included specialized personnel in providing services to individuals who are blind and to individuals who are deaf among the targeted areas of personnel shortages to which training projects might be directed. The terms "blind" and "deaf" were not specifically defined, but were broadly interpreted to include individuals with partial or total vision or hearing loss. The 1992 Amendments removed the terms "blind" and "deaf" from the listing of training areas in section 302(b)(1) and substituted training of personnel to provide services to individuals with specific disabilities.

Since the regulations in 34 CFR part 386 provide the basis for specific allocations of training funds to targeted areas of personnel shortages, it is particularly important that the listing of targeted areas be as specific and inclusive as possible.

Changes: The Secretary has included "specialized personnel for rehabilitation of individuals who are blind or have vision impairment" and "specialized personnel for rehabilitation of individuals who are deaf or hard of hearing" as targeted areas within § 386.1 for training allocations.

Lack of Academic Training in Guam (§ 386.1)

Comment: One commenter expressed concern that rehabilitation training in Guam, which in the past has been provided through continuing education projects under the long-term training program, will no longer be available.

Discussion: The Secretary recognizes the need for improved access to rehabilitation training for Guam and other remote and isolated areas. The Secretary believes that these needs will be met, in part, by distance learning training, which was first funded in fiscal year 1993 as a result of the 1992 Amendments (section 803(a) of the Rehabilitation Act of 1973, as amended).

Changes: None.

Eligibility of State Agencies and Other Public or Nonprofit Agencies and Organizations, Including Institutions of Higher Education, Under the Rehabilitation Long-Term Training Program (§ 386.2)

Comment: One commenter noted that, since State agencies and other public or nonprofit agencies do not offer degrees or certificates, maintaining those organizations as eligible applicants implies the intent to continue non-academic long-term training.

Discussion: Section 302(a) of the Act establishes the broad eligibility criteria for applicants under the Rehabilitation Long-Term Training program. The Secretary is aware of the rapidly changing auspices and circumstances under which specialized academic and certificate training is offered in the field of rehabilitation. Consortia and partnerships of States, public or nonprofit private agencies and organizations, and institutions of higher education may be formed to address rehabilitation training needs. The Secretary encourages those efforts and desires regulations that will facilitate new approaches through flexibility in eligibility requirements.

Changes: None.

Professional Corporation or Professional Practice (§ 386.4)

Comment: One commenter wrote in support of the provisions in the regulations that define professional corporation or professional practice.

Discussion: The Secretary appreciates the support for the definition of professional corporation or professional practice.

Changes: None.

Related Agency (§ 386.4)

Comment: One commenter suggested substituting the legislative definition of "community rehabilitation program" in place of the language proposed in § 386.4(b) describing related agencies that are not American Indian rehabilitation programs.

Discussion: Section 7(25) of the Act includes an expanded definition of "community rehabilitation program." The Secretary reviewed the definition of community rehabilitation program in preparing regulations implementing the Rehabilitation Act Amendments of 1992. There is not an exact match between the expanded definition of community rehabilitation program in Title I of the Act and the legislative definition of related agency in Title III. Therefore, "community rehabilitation program" was not used in the definition of related agency.

Changes: None.

Including Specific References to Culturally Diverse Populations in Appropriate Sections of the Regulations (§§ 386.1, 386.20, 386.33, and 386.40)

Comments: Several commenters felt that, although individuals who are unserved or underserved by programs under the Act are specifically referenced in the description of the Rehabilitation Long-Term Training program, policies and procedures to include culturally diverse recruitment and retention efforts should be implemented for all 30 categories of rehabilitation training. Selection criteria should be modified to give credit for program development related to culturally diverse populations.

Discussion: The Secretary agrees that it is essential that all requirements in the Rehabilitation Act of 1973, as amended, are implemented to ensure equal access and outreach for traditionally underserved populations, including minorities. At present, the primary method for directing rehabilitation training program grantees to meet those requirements is through the assurances mandated for each applicant. The Department is currently working to implement section 21 of the Act, including outreach services and other related activities, to enhance the capacity of minority institutions to compete for grants, contracts, and cooperative agreements. In the future, the Department may propose specific priorities or selection criteria that address needs of traditionally underserved populations across the range of rehabilitation discretionary programs.

Changes: None.

Minimum 10 Percent Matching Requirement (§ 386.30)

Comments: Many comments were received objecting to the requirement that the Federal share of an award may not be more than 90 percent of the total cost of a project under this program. A number of commenters pointed out that the eight percent indirect costs currently allowed by the Department on training awards do not cover current administrative costs. Concern was expressed that many universities would not provide a 10 percent match. Some commenters observed that the present negotiated system offers flexibility. Many commenters pointed out that post-employment training programs for community rehabilitation personnel would have difficulty with the 10 percent required match. Some university commenters indicated that their institutions face substantial resource problems. Other commenters asked if the match could be in-kind. One commenter wrote that the limitation of 90 percent Federal support for proposed projects is fair and reasonable.

Discussion: The Rehabilitation Act of 1973, as amended, requires a matching component for rehabilitation training grants. The Secretary believes that, if the Department states the minimum matching amount in advance of negotiations, the award process is more understandable and efficient. Most current academic grantees under the Rehabilitation Long-Term Training program have negotiated awards with a match in excess of 10 percent. The Secretary is aware that a number of non-academic, post-employment training grantees under this program have experienced difficulty meeting even a 10 percent matching requirement. This problem will be solved, in part, by funding some future awards with a post-employment focus under the Rehabilitation Continuing Education program in which the current matching requirement as presented in recent closing date announcements is four percent. In all instances, the applicant share may be in-kind. As a result of a recent program audit that identified

problems in the use of faculty time for in-kind matching, the Secretary prefers that the applicant share in the Rehabilitation Long-Term Training program by directly funding student scholarship assistance as the designated match.

Changes: The 10 percent matching requirement remains, but a new provision has been added indicating that the Secretary may waive part of the non-Federal share of the cost of the project if the applicant demonstrates during the negotiations process that it does not have sufficient resources to contribute the entire match.

Requirements for Directing Grant Funds: Adverse Impact of the Requirement That a Grantee Must Use at Least 75 Percent of Total Award for Scholarships as Defined in § 386.4 (§ 386.31)

Comments: Numerous commenters, primarily from community rehabilitation programs and related personnel training programs, expressed concern that the proposed 75 percent scholarship requirement would limit access of community rehabilitation program personnel to needed continuing education programs.

Discussion: The Secretary agrees that personnel employed in community rehabilitation programs should continue to receive short-term, continuing rehabilitation training. This will be accomplished by offering that training under other, more appropriate Rehabilitation Training program categories, including 34 CFR part 389 (Rehabilitation Continuing Education Programs) and 34 CFR part 390 (Rehabilitation Short-Term Training). The Secretary believes that the availability of needed post-employment training for community rehabilitation personnel will be provided through regional continuing education programs. However, the Secretary wants to ensure that all currently funded multi-year long-term training projects continue for the remainder of their project period.

Changes: A new provision has been added (§ 386.31(c)) stating that the requirement for a grantee to use at least 75 percent of the total award for scholarships does not apply for the remainder of the project period for multi-year projects in existence as of October 1, 1994.

Comments: One commenter expressed concern that directing long-term training programs to use at least 75 percent of their total award for scholarships will reduce cross-training of professionals who work with individuals with disabilities.

Discussion: The Secretary believes that rehabilitation short-term, continuing education, and in-service training programs offer excellent opportunities for cross-training of rehabilitation professionals. In addition, the Secretary believes that existing professional program accreditation processes and individual licensure and certification procedures by national, State, and professional organizations are attentive to cross-training needs.

Changes: None.

Comments: Several commenters observed that scholarships are not needed in a prosthetic or orthotic curriculum because programs attract more than enough qualified students. Moreover, it was noted that prosthetic and orthotic programs are costly to operate. Students attend labor intensive lab classes with a low student to instructor ratio. Although programs are making changes that will reduce expenses, supply and equipment costs are high, and without additional Federal support, it would be difficult to operate them. Many students now take loans to pay for their education, are supported by employers, or are self-supporting. Supplementation of these resources with direct student support from RSA could be useful, but the commenters do not feel this should be the primary method of support.

Discussion: The Secretary acknowledges that prosthetics and orthotics (P & O) rehabilitation training is highly individualized and often requires intensive lab supervision and high equipment costs. The Secretary will take these unique circumstances, to the extent that they are supported with evidence in the proposal, into consideration in reviewing the requirement to direct at least 75 percent of the total award for scholarships. The Secretary is concerned by the argument that scholarships are not needed in P & O because the field attracts more than enough students. The purpose of the Rehabilitation Long-Term Training program is to provide academic training in areas of personnel shortages identified by the Secretary. P & O has been identified as an area with personnel shortages, and providing students with scholarships ensures that the work-or-repay provisions of the Rehabilitation Act will direct graduates to service in support of State rehabilitation agencies in areas of personnel shortages.

Changes: None.

Comments: A number of commenters requested that the current regulations be maintained to address specialized nonacademic programs in deafness, blindness, mental illness, independent living, and in vocational evaluation because unique, one-of-a-kind projects currently funded under long-term training would no longer be eligible for support under the new regulations.

Discussion: The Secretary believes that the Rehabilitation Long-Term Training program cannot be expected to meet all specialized training needs, particularly in nonacademic areas. The Secretary plans to make greater use of the extensive flexibility provided by section 302 of the Act and the six specific rehabilitation training programs to ensure that specialized training needs are addressed.

Changes: None.

Comments: Several representatives of tribal-controlled colleges commented that, because of support that they receive from the Bureau of Indian Affairs for each Native American student, there is less need for stipends and scholarships as student incentives. Tribal-controlled colleges, however, need greater levels of financial support to maintain national and regional networks through faculty travel, for supervision at internship sites; for course development, and for materials development. Commenters were concerned that the 75 percent limit would hurt program growth and quality and would be detrimental to undergraduate rehabilitation programs in rural regions where graduates work with American Indian clients.

Discussion: The Secretary agrees that tribal-controlled colleges and other training programs for Native Americans often conduct rehabilitation training under unique circumstances. Under § 386.31(b), the Secretary may award grants that use less than 75 percent of the total award for scholarships based on the unique nature of the project. It will be particularly important for applicants to document the unique circumstances that apply in their proposals to assist the Secretary in making this determination.

Changes: None.

Comments: Two commenters observed that, if a quantitative requirement regarding the percentage of funds directed to scholarships is necessary, there should be a reduction in the limit and a broadening of the unique circumstances under § 386.31(b) if less than 75 percent of the funds are devoted to scholarships. The Department should provide examples of circumstances of projects funded with less than 75 percent in scholarships. In addition, projects should be approved that demonstrate that the shortage they intend to meet is best met by funding training program resources such as faculty and equipment. Many traditional degree or certificate granting disciplines, such as physical medicine

and rehabilitation and its residency programs, are limited because of the lack of adequate numbers of faculty and, therefore, programs. Also, there should be an exception for training programs in newly emerging areas, such as independent living, that do not have degrees or certificates.

Discussion: The Secretary believes that a quantitative limit is necessary to establish clear standards for all applicants. Current long-term training grants average over $100,000 per year; therefore, a grant with 75 percent of the award targeted for scholarships will still have more than $25,000 for other related costs. Broadening the circumstances under which unique projects may be supported that use less than 75 percent of the total award for scholarships is not consistent with the overall objective of the long-term training program.

Changes: None.

Comments: Many commenters from university rehabilitation training programs expressed concern that programs at their institutions might be discontinued if Federal funds were required to be directed to student support rather than for paying for instructional costs.

Discussion: Existing regulations require academic training projects with a multi-year project period to increase the grantee's share of teaching costs progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period. The 75 percent requirement provides greater latitude than existing regulations.

Changes: None.

Requirements for Directing Grant Funds: The Department of Education Should Target Priorities To Require Grantees To Award Specific Degrees or Certificates (§ 386.31).

Comments: One commenter requested that the Secretary use program announcements to target programs on degrees and certificates in appropriate areas. Two commenters requested that the Secretary be sensitive to individual student preferences for attending degree or certificate programs.

Discussion: The Secretary believes that current professional accreditation by the designated accrediting agency in the professional field in which grant support is being provided is adequate assurance that an academic program offers an appropriate degree. From time to time, the Secretary may assign an absolute priority to proposals offering a specific degree or certificate if the Secretary has determined that personnel shortages in the professional field require that preference. Those priorities will be presented for public comment before applications are solicited. The Secretary agrees that, to the extent possible in responding to personnel shortages, a wide range of degree and certificate programs offering Federal rehabilitation scholarship assistance should be available to facilitate student choice. However, no change in the regulations is required.

Changes: None.

Exclusion of Federal Employees From Receiving Training Scholarships (§ 386.33(a)(2))

Comment: One commenter protested that this is not a fair regulation because it discriminates against a group of people—Federal employees. The example was a full-time GS–7 Federal correctional officer enrolled in a rehabilitation counseling program at a university with an RSA grant.

Discussion: The Secretary agrees that the limitation on Federal employees serves no useful purpose.

Changes: The restrictive language has been dropped.

Grantee Disbursement and Scholarship Assurance Provisions (§§ 386.33 Through 386.43)

Comments: Several commenters called for a less adversarial phrasing of scholarship conditions to enhance recruitment of trainees. Other suggestions included placing the burden on the scholar (at the time of the exit interview) to report to the grantee using a packet containing several change-of-address forms, change-of-employment forms, and a completion of work obligation form. Another commenter stated the belief that any tracking or reporting activities pursuant to payback obligations are the exclusive responsibility of the granting agency.

Discussion: The regulations describe conditions that must be met by a grantee after award in subpart D and conditions that must be met by a scholar in subpart E. No adversarial system of grantee vs. scholar or Federal agency vs. grantee is implied or intended. The intent is to clearly identify the responsibilities of all parties. Tracking and recordkeeping, which can be facilitated by change-of-address and change-of-employment forms, are not excessively burdensome for the numbers of students supported by the average grant under the Rehabilitation Long-Term Training program.

Changes: None.

Work-or-Repay Requirements for Certificate Programs (§§ 386.4 and 386.34)

Comment: One commenter asked for assurances that the work-or-repay provisions will be applied to all academic degree pre- or post-employment programs as well as to non-degree awarding, certificate granting continuing education programs.

Discussion: The Secretary agrees that the work-or-repay provision applies to each individual who receives a scholarship, whether for a degree or a certificate program. The term "certificate" is defined in § 386.4 of the regulations. Examples of certificate programs that offer scholarships and are subject to the work-or-repay provision include post-baccalaureate training in allied health areas, such as occupational therapy, physical therapy, and prosthetics and orthotics. The Secretary believes that the work-or-repay provision does not apply to certificate programs in non-academic or emerging areas because no scholarship assistance is provided to individuals. Assistance in the form of per-diem expenses for short-term training is not considered to be scholarship assistance subject to the work-or-repay provision. It would be burdensome and inappropriate to enforce a work-or-repay provision for that assistance. The Secretary believes that confusion about the different types of certificates and the applicability of repayment will be resolved by focusing the Rehabilitation Long-Term Training program on academic scholarship training (degree and certificate) subject to the work-or-repay provision and using other more appropriate training authorities for non-academic, non-scholarship, post-employment training.

Changes: None.

Stricter Standards for Work-or-Repay Provision (§ 386.34)

Comment: One commenter suggested that grantees be required to arrange for all scholars to attend an extensive pre-enrollment work-or-repay seminar series at which participating agencies in the city or State (along with the grantee) would provide clearly detailed information regarding job opportunities for and subsequent responsibilities of scholars.

Discussion: The Secretary agrees that a job seminar would be valuable for many scholarship recipients and potential rehabilitation employers. Such an activity, however, should be at the discretion of the grantee and not a regulatory requirement.

Changes: None.

Flexibility in Future Applications of Work-or-Repay Requirements (§ 386.34)

Comment: One commenter encouraged flexibility in the application of this requirement to emerging fields like independent living.

Discussion: The Secretary agrees that the work-or-repay provision should apply only to academic training and that fields such as independent living (IL) do not currently provide academic training subject to the work-or-repay provision. The Secretary plans to support future post-employment training grants in IL under training authorities that are not subject to the work-or-repay provision. However, it appears likely that research and curriculum development advances will soon make academic training, particularly in community colleges, possible. Therefore, in anticipation of the need to provide academic or certificate training opportunities, the Secretary has also retained IL as a Rehabilitation Long-Term Training program field.

Changes: None.

Work-or-Repay Tracking Systems (§ 386.34(g))

Comments: Several commenters expressed concern that the proposed regulations inappropriately place grantee institutions in watch-dog roles. In particular, there was objection to the requirement for documentation that the grantee has checked for addresses of missing scholars with alumni organizations.

Discussion: The Secretary does not believe that the requirement that the grantee check with university-sponsored alumni organizations if it is experiencing difficulty in locating a scholar is inappropriate. The regulations do not constitute a basis for forcing disclosure of records from any private organization. If a grantee cannot document, because of the inability to locate a scholar who has graduated, that requirements of the work-or-repay provision have been met by an individual, the grantee will be responsible for reporting to the Secretary that the individual has not completed the requirement. The Secretary will then initiate enforcement actions as outlined in § 386.43. The intent of the regulations is to have the grantee exhaust all possibilities to locate and contact the individual before the matter is referred to the Secretary.

Changes: None.

Work-or-Repay Records (§ 386.34(h))

Comments: Two commenters expressed concern that the proposed regulations inappropriately obligate grantee institutions to perform time-consuming and expensive database creation, maintenance, updating, and reporting functions for as many as six years for which the grantee receives no compensation from the Federal Government.

Discussion: The Secretary believes that the work-or-repay provision is a partnership between grantees and the Federal Government. Grantees are closest to the individuals and are in the best position to advise, assist, and admonish scholars on matters related to their work-or-repay requirements. The Secretary believes that administrative costs for these activities are minimal and are not feasible for line itemization. Instead, the Secretary sees these costs as subsumed under grantee indirect costs. The regulations have been written to state clearly that the responsibility for recordkeeping extends until the repayment period has ended for all students provided scholarships.

Changes: None.

June 1, 1992, Effective Date for New Work-or-Repay Provisions (§ 386.34)

Comment: A commenter expressed concern that this requirement is being imposed a full five months before the 1992 Amendments to the Rehabilitation Act were even approved. The commenter asked how, if these proposed regulations are in response to the 1992 Amendments, can this date be required since it predates the amendments?

Discussion: The June 1992 effective date was set retroactively in the Rehabilitation Act Amendments of 1992.

Changes: None.

Payback Requirements for Scholars Who Become University Educators (§ 386.34)

Comments: Two commenters observed that the proposed regulations do not permit graduate and doctoral level scholarship recipients to meet the work-or-repay provision by teaching at a university unless the university has a formal agreement with the State agency identifying the university as a "related agency."

Discussion: The identification of a "related agency" derives from the Rehabilitation Act of 1973, as amended. Educators whose college or university employer meets the definition of a related agency (§ 386.4) by providing services to individuals with disabilities under an agreement with a designated State agency and who are employed in the area of specialty for which Federal support for their training was provided will have no problem meeting the requirement. Examples of acceptable arrangements include educators who have agreements to supervise field placements of students in training at State agencies and related agencies, who serve as advisors or consultants to State agencies and related agencies, and who provide direct services through their universities, including the instruction of individuals with disabilities. The key to meeting the work-or-repay requirement through employment in an educational institution is that the institution have an appropriate agreement with the designated State agency and that the scholar work in his or her specialty area.

Changes: None.

Proposed Six-Year Repayment Period (§ 386.34)

Comment: One commenter expressed concern that, after completing a two-year graduate program, a scholar will have only six years for repayment instead of the current ten-year repayment period.

Discussion: The time limits are set in the Rehabilitation Act Amendments of 1992.

Changes: None.

Work-or-Repay Provisions for Scholars Receiving Federal Benefits (§ 386.43)

Comment: One commenter suggested that the deferral of repayment due to disability be modified to exclude circumstances under which the individual achieves Social Security Disability Insurance (SSDI) earned income status.

Discussion: The Secretary does not believe that there is a need to distinguish the repayment status of scholars by the type of disability benefits a scholar may be receiving.

Changes: None.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the language added in § 386.1(b)(30) merely incorporates into the regulations a statutory change made by the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 to the Rehabilitation Act of 1973, as amended, and does not implement substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the change in the regulations is unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Grant programs, Rehabilitation training. Reporting and recordkeeping requirements.

Dated: June 9, 1994.

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training: Rehabilitation Long-Term Training)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 386 to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.

386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
385.31 What are requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

Authortiy: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Vocational rehabilitation counseling;

(2) Rehabilitation technology;

(3) Rehabilitation medicine;

(4) Rehabilitation nursing;

(5) Rehabilitation social work;

(6) Rehabilitation psychiatry;

(7) Rehabilitation psychology;

(8) Rehabilitation dentistry;

(9) Physical therapy;

(10) Occupational therapy;

(11) Speech pathology and audiology;

(12) Physical education;

(13) Therapeutic recreation;

(14) Community rehabilitation program personnel;

(15) Prosthetics and orthotics;

(16) Specialized personnel for rehabilitation of individuals who are blind or have vision impairment;

(17) Rehabilitation of individuals who are deaf or hard of hearing;

(18) Rehabilitation of individuals who are mentally ill;

(19) Undergraduate education in the rehabilitation services;

(20) Independent living;

(21) Client assistance;

(22) Administration of community rehabilitation programs;

(23) Rehabilitation administration;

(24) Vocational evaluation and work adjustment;

(25) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities;

(30) The use, applications, and benefits of assistive technology devices and assistive technology services; and

(31) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: 29 U.S.C. 711 and 771a)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: 29 U.S.C. 771a(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f)(1) *Evidence of need.* (10 points) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation supply and demand for qualified rehabilitation personnel and includes an assessment of how the project will respond to personnel needs established in local, State, or national studies.

(g)(1) *Relevance to State-Federal rehabilitation service program.* (10 points) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs, or to improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(h)(1) *Nature and scope of curriculum.* (20 points) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match.

(Authority: 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in § 386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) For multi-year projects in existence on October 1, 1994, the requirements of paragraph (a) of this section do not apply for the remainder of the project period.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(3) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(4) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(5) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(6) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR Part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for

receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in § 386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in § 386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in § 386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in § 386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in § 386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in § 386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under § 386.34(c)(1)(i)(C).

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—

(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 29 U.S.C. 711(c) and 771a(b))

[FR Doc. 94–14594 Filed 6–15–94; 8:45 am]

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Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Notice of Funding Availability for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3765 ; FR–3650–N–01]

NOFA for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $1.0 million of FY 1993 Fair Housing Initiatives Program funding for a special project to be carried out in the Chicago, Illinois metropolitan area. The purposes of this project, which is part of the overall effort to reinvent the way the Department carries out its civil rights mission, are (1) to test the effectiveness of a metropolitan areawide affirmative fair housing marketing plan and associated activities to be administered by a central clearinghouse, especially in terms of generating increased housing choice and opportunity for eligible assisted and insured housing applicants; (2) to determine the potential savings in administrative costs for both housing providers and the Department if the clearinghouse concept were to be implemented permanently; and (3) to determine whether eligible applicants for federally-assisted and/or insured private rental or sales housing would be better served by the clearinghouse in terms of the support services performed during the mortgage loan evaluation and rental application processes.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application for funding under this Notice will be available following publication of the Notice. The actual application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll-free number 1–800–343–3442.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, (202) 708–0288, or William Dudley Gregorie, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, room 5226, 451 Seventh Street SW., room 5224, Washington, DC 20410, (202) 708–2287. A telecommunications device (TDD) for hearing- and speech-impaired persons is available at (202) 708–2287. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2529–0033.

I. Purpose and Substantive Description

(a) Authority

(1) The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, advertising or financing of housing. The Fair Housing Act also directs the Secretary to cooperate with State and local agencies administering fair housing laws, and to cooperate with and render technical assistance to State, local and other public or private entities carrying out programs to prevent and eliminate discriminatory housing practices. The Act also directs the Secretary to administer the Department's housing and urban development programs in a manner affirmatively to further the objectives of the Act.

In addition to the Affirmative Fair Housing Marketing requirements described below, the Department has since 1971 attempted to translate the affirmatively furthering mandate through policy mechanisms such as the Site and Neighborhood Standards, Tenant Selection and Assignment and Equal Housing Opportunity Plans, and other program and project-specific strategies. In recent months the Department has recognized that these project and program-specific mechanisms do not fully address the broad-based fair housing problems which actually exist. The Department has also identified the problem of concentration of persons by race and income as a major barrier to the achievement of the objectives of fair housing in the United States. The Department is in the process of formulating appropriate responses that will be tested in the near future through special demonstration projects similar to this lab, including the feasibility of implementing a metropolitan areawide affirmative fair housing marketing plan through a clearinghouse mechanism.

(2) The FHIP Program

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established as a demonstration program the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organization Initiative. Section 905 also gave the program permanent status.

The regulations at 24 CFR part 125, subpart C, describe the purpose and eligible activities under the Education and Outreach Initiative, the segment of the FHIP program under which the activity proposed in this NOFA is to be funded. Section 125.303(b) describes eligible outreach projects that may be funded under this initiative, including but not limited to the following:

"(1) Developing national, regional and local media campaigns;

(2) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(3) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(4) Developing and implementing a response to new or more sophisticated housing practices that may result in discriminatory housing practices; and

(5) Developing mechanisms for the identification of and quick response to housing discrimination cases that involve physical harm."

The activities set forth in this NOFA are eligible activities under the Education and Outreach Initiative of the FHIP program, since they relate to various eligible activities of this initiative. Other sections of this NOFA will specifically illustrate how this relationship is facilitated.

(3) Affirmative Fair Housing Marketing Requirements

The Fair Housing Act states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The Act also states at Section 808(e)(5) that the Department of Housing and Urban Development shall administer its programs in a manner affirmatively to further the objectives of the Fair Housing Act. Affirmative Fair Housing Marketing has, since 1972, been one of the means by which the Department has carried out Section 808(e)(5) of the Act through the programs it has administered. The purpose of Affirmative Fair Housing Marketing as stated in the regulations at 24 CFR 200.600, is to "achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin." These regulations also apply to all applicants for participation in HUD insured subsidized or unsubsidized housing programs whose applications are approved for:

Multifamily projects and manufactured home parks of five or more lots, units or spaces, and initial submissions by a lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision;[1] and dwelling units when the applicant's participation would exceed five or more HUD-insured single-family homes within the preceding twelve-month period. Such participants are required to develop an affirmative marketing program on a HUD-approved form. The regulations describe the specific components of an Affirmative Fair Housing Marketing Plan (AFHM) at 24 CFR 200.620.

The Department reviews and evaluates these affirmative marketing plans submitted on Form HUD–935.2 (see attachment) as part of an applicant's request for funding under a number of single-family and multifamily mortgage insurance and subsidy programs. These reviews and evaluations, as well as the monitoring of the implementation of these Affirmative Marketing Plans, are conducted under procedures outlined in HUD Handbook 8025.1 REV–2, Implementation of Affirmative Fair Housing Marketing Requirements. The Department also conducts compliance-related activities under the regulations at 24 CFR Part 108, Affirmative Fair Housing Marketing Compliance Regulations.

A number of evaluations of both the administration of affirmative fair housing marketing and the underlying objectives of the policy conducted since 1974 have raised questions about AFHM's effectiveness and results, especially in terms of its effects on racial housing patterns within housing market areas. These evaluations and recent assessments of how the review of Affirmative Fair Housing Marketing (AFHM) Plans fits into the overall workload of the Field Office FHEO Divisions and Program Operations Divisions in the Regional Offices have also raised questions about the overall cost-effectiveness and efficiency of the review process itself. The 1990 evaluation of AFHM performed by the Office of Program Standards and Evaluation recommended that the Department pilot test the use of a third party to accept applications, check references, and provide an applicant a list of all available housing opportunities under HUD-assisted and insured single-family and multifamily programs. The evaluation also recommended that the Department conduct studies of the manner in which various groups search for rental and sales housing and the costs and benefits of various marketing techniques. The activities described in this NOFA address these recommendations in large part.

(b) Allocation Amounts

For FY 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (approved October 6, 1992, Pub. L. 102–389), (93 Appropriations Act) appropriated $10.6 million for the FHIP program. Of this amount, $1 million of Education and Outreach Initiative funds is made available under this NOFA to carry out an affirmative fair housing marketing "lab" experiment. The balance of $9.6 million in FY 1993 funds was made available in a NOFA published on December 22, 1993 (58 FR 68000) and amended on February 25, 1994 (59 FR 9235).

The Department estimates that the affirmative fair housing marketing lab project will function approximately 18 months at a cost to the federal government not to exceed $1.0 million dollars. The final cost will depend upon submissions from eligible applicants. In no case will the cost to the federal government for implementing the project under this NOFA exceed $1.0 million dollars. The continuing operation of the clearinghouse following completion of the lab will depend entirely on the income generated from fees and other funding sources.

(c) Project Objectives

As a means of implementing the Department's strong commitment to administer its programs affirmatively to further fair housing, the Department seeks to implement an affirmative fair housing marketing lab. This lab will test an areawide affirmative marketing approach intended to expand affordable housing opportunities for those persons identified as least likely to apply for the housing because of where it is located. The specific objectives of this lab are:

(1) To promote greater awareness and acceptance on the part of housing providers and the entire community of the need to market assisted housing on a nondiscriminatory basis throughout the metropolitan area to increase housing choice and advance equal housing opportunity;

(2) To develop a model for the use of metropolitan areawide affirmative marketing as an effective tool to affirmatively further fair housing and provide greater affordable housing choice and opportunity throughout a metropolitan area;

(3) To determine whether use of a clearinghouse is an effective method over the long-term for assisted and insured multifamily housing providers and builders and developers of HUD-insured single-family housing to carry out their responsibilities under the Affirmative Fair Housing Marketing Regulations; and

(4) To test ways for metropolitan areawide affirmative marketing clearinghouses to become and remain financially self-supporting.

(d) Eligible Applicants

The following entities, either individually or in combination, are eligible to apply for funding under this

[1] See the Federal Register of August 3, 1993, HUD Systems for Approval of Single-Family Subdivisions. This Final Rule included amendments to the Affirmative Fair Housing Marketing Regulations that added handicap and familial status as protected classes under these Regulations.

NOFA: Non-profit civil rights and housing organizations; organizations representing segments of the housing or mortgage lending industries; higher education institutions with expertise in civil rights and housing. While location within the Chicago metropolitan area would be highly desirable, it is not required.

(e) Project Components

HUD seeks to implement a fair housing marketing lab to examine new methods for offering privately operated federally assisted and insured multifamily housing, within the Chicago metropolitan area to all eligible residents of the area. For the purpose of this NOFA, the Chicago metropolitan area includes the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake Counties. This area was selected because of its extensive past experience in implementing areawide interjurisdictional programs to promote fair housing and increased housing choice and because of the existing infrastructure for carrying out such programs. It is hoped that a new approach to affirmative fair housing marketing will result in a breakdown of jurisdictional barriers to housing opportunities and promote initiatives that diminish residential segregation and encourage residential diversity. The $1 million offered through this NOFA will be targeted toward affirmative fair housing marketing activities affecting either multifamily housing alone, single-family housing alone, or both simultaneously. In addition, an applicant may focus its proposed activities on either the entire metropolitan area or specific target areas which it may designate.

The Affirmative Fair Housing Marketing Lab involves three distinct elements:

(1) The first element of the lab entails the establishment of a metropolitan areawide clearinghouse that will:

(i) Develop and administer a metropolitan areawide affirmative fair housing marketing plan affecting participating privately-owned federally assisted and insured multifamily housing. A complete description of this Plan is found at Section IV (a)(2) of this NOFA. The plan would not include assisted housing owned by the public housing authorities in the Chicago metropolitan area, since at this time the Department's Affirmative Fair Housing Marketing Regulations do not apply to PHA-operated housing. Furthermore, the Department plans to conduct similar, larger-scale experiments on metropolitan-wide strategies which will combine both privately-operated and PHA-operated housing.

(ii) Develop and maintain the following databases:

(A) A metropolitan areawide database of all families eligible for privately operated HUD-assisted (including insured) multifamily housing who have used the services offered by the clearinghouse. The database would be compiled through any of the following methods:

(*1*) Encouraging families already on waiting lists of participating projects to take advantage of the housing opportunities offered by the clearinghouse. Under this concept, the project manager would notify in writing all families on his or her individual project waiting list of the existence of the clearinghouse and the availability of both the services and the expanded housing choices it will offer. The notice would also say that any family which was found to be eligible for any housing opportunity offered by the clearinghouse would not lose its position on the individual project's waiting list and would in fact be "crosslisted" for all projects for which the family was eligible.

Note: A participant may opt to continue to maintain its own project waiting list while using the other application intake services.

(*2*) Recruiting families who respond to advertisements placed in various media as part of the proposer's metropolitan areawide affirmative marketing plan;

(B) An areawide list of housing opportunities offered by managers of participating multifamily projects subject to AFHM requirements. These housing opportunities may be categorized by jurisdiction within the Chicago metropolitan area, by neighborhood within the City of Chicago, by assisted or insured housing program, and by bedroom size;

(C) The demographics of each development and the neighborhoods in which the assisted and insured housing opportunities are located must be included and updated as turnover occurs. Information on the social services, transportation, schools, churches, employment opportunities and other facets of the community must also be included.

(iii) Carry out a major effort to secure voluntary participation in the clearinghouse by a significant number of housing providers subject to AFHM requirements that do business within the area designated by the applicant. For purposes of this NOFA, housing providers include corporations, individuals, or other entities who own and/or operate apartment complexes of 10 or more units (including the Illinois Housing Development Authority which operates Section 8 Housing projects subject to AFHM requirements), realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and financial institutions involved in the making of loans on residential property. This effort shall include outreach and education programs targeted at apartment managers, real estate sales organizations and housing industry professionals, and shall describe the roles of the clearinghouse and the providers in helping individual families take advantage of expanding affordable housing choices throughout the Chicago metropolitan area. These outreach activities should be targeted especially toward those housing professionals that do business outside of racially-impacted, ethnically-impacted and lower-income impacted neighborhoods and are willing to attract applicants to those areas in which their race does not predominate. Such activities should also be targeted to housing professionals who do business in predominantly minority areas and are willing to attempt to attract non-minority applicants.

The clearinghouse operator will have to explain the financial benefits and obligations of participating in the clearinghouse, which can include the participants' being relieved of their AFHM and eligibility determination responsibilities. To encourage participation by housing providers, HUD will waive the AFHM requirements and, as necessary to permit participation, other regulatory and contractual requirements pertaining to tenant selection and assignment that are not required by statute throughout the period of the lab. These waivers would affect those who would otherwise be subject to the waived programmatic requirements (i.e., all persons approved for the development or rehabilitation of single-family subdivisions, multifamily projects of 10 or more units, and all other persons subject to AFHM Plan requirements in Departmental programs). This affirmative fair housing marketing lab will not alter in any way the requirement for Public Housing Authorities to develop and submit an Equal Housing Opportunity Plan (EHOP) for Section 8 existing housing.

(iv) Operate a one-stop metropolitan areawide housing center which shall perform the following services:

(A) Processing applications for participating federally-assisted and/or insured privately-owned and operated multifamily housing submitted by

families who desire to investigate housing opportunities offered by participating owners, managers and real estate brokers. While making applicants aware of all housing opportunities in the area designated by the applicant, the office shall emphasize housing opportunities within areas in which the applicant is least likely to apply for the housing without special outreach activities, because of where the housing is located, and offer additional fair housing counseling for those persons desiring to relocate within such areas. The clearinghouse shall also encourage the creation of housing opportunities within predominantly minority sections of the lab area, so that applicants regardless of race or ethnicity may take advantage of them. The clearinghouse shall also make available information on transportation, schools, social services, employment opportunities and other facets of living in the area selected by the applicant.

For all families that have not previously been on an assisted project's waiting list, the clearinghouse could review for eligibility, perform income and employment verification, secure all information necessary to determine federal or local preferences, and automatically crosslist the applicant for each type of housing project within the program for which he or she is eligible. For example, if a family were to apply for a Section 221(d)(3) unit and were to be found eligible under that program, the family would be crosslisted for all of that program's projects which were participating in the clearinghouse.

(B) Conduct testing and other related activities, particularly in the event that an applicant served by the clearinghouse appears to have encountered discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status or other prohibited conduct that may violate the Fair Housing Act or Executive Order 11063. However, testing for enforcement purposes may be funded only from sources other than this NOFA, and the proposer shall indicate clearly the purpose of any testing and the source and amount of funding devoted to this purpose. Testing, if carried out for educational purposes only, may be funded through this NOFA.

(C) Provide escort and other services to families willing to explore housing opportunities in neighborhoods where their race or ethnic group does not predominate and where they would have been least likely to apply without special outreach.

(v) The applicant can also propose any of the following activities affecting FHA-insured, VA or conventionally financed single-family housing which is affordable for low-income families. These activities may be funded either exclusively from this NOFA, exclusively from sources other than this NOFA or from both federal and non-federal sources:

(A) An areawide affirmative fair housing marketing plan which emphasizes the single-family market;

(B) An areawide list of single-family homeownership opportunities generated from financial institutions, realty companies and local governments. These entities may refer prospective home purchasers to the clearinghouse upon request, so that such purchasers can avail themselves of the homeownership opportunities listed by the clearinghouse; and

(C) A campaign that targets: (*1*) Realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and (*2*) financial institutions involved in the making of loans on residential property through the outreach program to housing providers contained in the proposed areawide affirmative marketing plan.

(2) The second element of the lab consists of an evaluation of the clearinghouse concept. The evaluation shall address:

(i) How the clearinghouse concept compares with the present system of HUD review of individual affirmative marketing plans and with the participation by local affiliates of the National Association of Realtors, the National Association of Homebuilders, the National Association of Real Estate Brokers and several other major national real estate industry organizations in the Voluntary Affirmative Marketing Agreement Program, in terms of cost-effectiveness; and

(ii) How effective the clearinghouse is in creating greater housing choice and opportunity and in affecting change in a community's housing occupancy and homeownership patterns.

The Department has decided that the evaluation of the activities conducted under this NOFA will be conducted by an independent contractor prior to the end of the project.

(3) The third element of the lab requires the development of new ways to:

(i) Identify groups within the eligible population that are less likely to apply for housing without special outreach;

(ii) Encourage those groups to take advantage of housing opportunities in nontraditional areas;

(iii) Identify effective advertising methods;

(iv) Increase awareness of nondiscriminatory tenant selection and application processing; and

(v) Test other ways to implement affirmative fair housing marketing.

(f) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

All proposals submitted in response to this NOFA will be ranked on the basis of the following selection criteria:

(i) *The anticipated impact of the proposal on the concerns identified in the application.* (25 points). In determining the anticipated impact of each proposal, HUD will evaluate whether the proposal is well-conceived and likely to be successful if implemented, and will consider the degree to which the proposal addresses the significant fair housing issues affecting the Chicago metropolitan area which had been identified in the fair housing analysis required under this NOFA. Particular emphasis will be placed on how the proposer describes the potential impact of the proposed plan on the fair housing environment. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2) and (a)(6) of this NOFA under the heading "Checklist of Application Submission Requirements".

(ii) *The extent to which the proposal will provide benefits in support of fair housing after the lab has been completed.* (25 points) In determining the extent to which the proposal will continue providing benefits after funded activities have been completed, HUD will consider the degree to which the concept can be used as a model for similar metropolitan areawide affirmative marketing clearinghouses in other parts of the country. HUD will also evaluate how the applicant plans to insure the long-term financial viability of the clearinghouse fundraising from public and private sources or other means. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2), (a)(5), and (a)(8) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iii) *The extent to which the project will provide the maximum benefits in a cost-effective manner* (20 points). In determining the extent to which the proposal will provide the maximum benefit for the metropolitan area covered by this NOFA in a cost-effective manner, HUD will consider the quality and reasonableness of the proposed statement of work, and the timeline and

budget for implementation and completion of the lab.

HUD will consider as well the adequacy and clarity of proposed procedures to be used by the proposer for monitoring the progress of the lab and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established are being met.

The applicant's capability in handling financial resources (e.g., adequate financial control and accounting procedures) demonstrated through previous project management experience will be taken into account as part of the assessment. HUD will also consider the degree to which the applicant proposes to use funds for program costs as opposed to administrative costs. This criterion will be judged on the basis of the proposer's submissions in response to Paragraphs IV(a)(3), (a)(5) and (a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iv) The *extent to which the applicant's professional and organizational experience will further the achievement of the proposal's goals* (20 points). In determining the extent to which the applicant's professional and organizational experience are likely to further the achievement of the proposal's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past or current projects, including projects that have addressed the problem of providing housing on a nondiscriminatory basis to minorities, women, the disabled and other protected classes.

HUD will also consider these qualifications in the context of the applicant's overall knowledge of the fair housing environment in the Chicago metropolitan area. It will also consider the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors and consultants. This criterion will be judged on the basis of the proposer's submissions in response to Paragraph IV(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements".

(v) *The extent to which the project will utilize other public or private resources that may be available* (10 points). The applicant shall describe whether in addition to the $1.0 million provided by this NOFA it plans to use other public or private resources. The other resources must be clearly and specifically targeted for this project and must be over and above the resources available to the applicant as part of its present, non-project operations for such expenses as salaries, equipment, supplies and rent. This criterion will be judged on the basis of the applicant's response to Paragraph IV (a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements".

(vi) *Minority Business Enterprise/ Women-Owned Business Enterprise* (5 points). The applicant shall also describe its experience in Minority Business Enterprise/Women-Owned Business Enterprise contracting. The applicant shall provide a summary of the total amount awarded in each of the two categories for the previous three years and the percentage that amount represents of the total contracts awarded by the applicant in the relevant time period.

(2) Selection Process. Each application for funding will be evaluated competitively and awarded points based on the General Selection Criteria identified in the previous section. The final decision rests with the Assistant Secretary or her designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order.

(3) Cost factors. The Department expects to fund one proposal as a result of this NOFA. It is possible, however, that two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. Should that occur, their relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded whose costs are determined to be unrealistically low or unreasonably high.

(f) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. The Selectee will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. If an award is not made to an applicant whose application is in the initial funding ranking because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding ranking, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative agreement to the successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be appropriate after negotiations with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more of the components of the proposal is unreasonable or unnecessary.

(ii) The applicant has demonstrated an inability to manage HUD grants;

(iii) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in FHIP, and denial of further participation in programs of the Department or of any federal agency.

III. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Statement of Work and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll-free number 1–800–343–3442. To

ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Laurence D. Pearl, Director, Office of Program Standards and Evaluation, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, room 5224, 451 Seventh Street SW., Washington, DC 20410. The application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

IV. Checklist of Application Submission Requirements

(a) General Requirements

The application kit will contain a checklist of application submission requirements to complete the application process. Each proposal submitted under this NOFA must contain the following items:

(1) A metropolitan areawide analysis of the impediments to fair housing choice faced by individual homeseekers within the Chicago metropolitan area, taking into account any of the institutional problems involving the major segments of the real estate and lending industries. This analysis must include a discussion of the problems which specifically relate to the marketing of single-family and multifamily housing to all segments of the population, with particular emphasis on marketing to persons considered protected under the Fair Housing Act and other statutes. The analysis must also discuss the connections between the effectiveness of marketing and the processes of selecting tenants for multifamily projects and evaluating the creditworthiness of applicants for home mortgages. The analysis must also address how its proposed clearinghouse concept will (i) address any and all impediments identified, (ii) help effect change in the current racial and income related housing patterns within the Chicago metropolitan area affected by this NOFA, and (iii) help increase the awareness of all participants in the housing process, especially participants from the real estate industry, of their obligations under fair housing statutes.

(2) A metropolitan areawide affirmative fair housing marketing plan with the following components:

(i) A description of an overall advertising campaign targeted toward groups identified as least likely to apply for assisted housing located within areas for reasons such as the race or national origin of the persons in the area, the lack of units that are accessible to physically disabled persons in the area and the absence of significant numbers of families with children in the area. The campaign may be organized to reach the entire area affected by this NOFA or may be segmented to reach particular jurisdictions, sections within individual jurisdictions or particular segments of the eligible population. The plan shall describe the media to be used, including minority media, community organizations and contacts, referral services that assist disabled persons, and other tactics. The objective of this part of the plan is to encourage prospective renters and home purchasers to use the services of the clearinghouse in their housing searches, especially those services that will support their searches within non-traditional areas.

(ii) A campaign to involve the various provider communities in the clearinghouse on a voluntary basis, *e.g.*, assisted multifamily housing managers, local boards of realtors, home builders associations and individual home builders. The plan shall describe the methods to be used to recruit within the provider community, and how it plans to describe the incentives and obligations (both financial and otherwise) for participation in the clearinghouse. All such financial and other incentives and obligations shall be reviewed and approved by the Department prior to the implementation of this lab. The plan shall also describe any and all training programs to be presented to clearinghouse participants on their obligations under federal, state and local fair housing laws.

(iii) A fair housing counseling program to be given all prospective renters and homebuyers who use the clearinghouse's services to search for dwellings located within areas in which their race or ethnic group does not predominate and in areas where they would be otherwise least likely to apply for housing without special outreach activities due to factors pertaining to the racial or ethnic composition of the neighborhood.

(iv) A goals statement on ensuring increased housing choice and causing deconcentration by race and income in different sections of the community. These goals may be stated in terms of achieving socio-economic changes, *e.g.*, in the racial/ethnic composition of particular neighborhoods or projects, or of getting individual homeseekers to feel that their housing options were increased by availing themselves of the services offered by the clearinghouse. The goals can also be stated in terms of bringing about changes in the attitudes and practices of financial institutions, real estate offices, apartment management companies and other entities that make decisions about their customers' housing choices.

(v) Description of the structure of a consolidated areawide database for multifamily housing units offered by the clearinghouse's fair housing center. This database can be generated from applicants who avail themselves of the services offered by the fair housing center after it opens, or from the waiting lists maintained by the individual participating private owners or management companies prior to the center's opening. The proposer shall also describe the mechanics of actual tenant selection, *e.g.*, selection by the fair housing center staff or by the individual apartment management company or landlord; the procedures to be used by the clearinghouse in processing applications from individual apartment seekers and the arrangements to be made with participating multifamily project managers with respect to referrals from the clearinghouse and the actual selection of tenants;

(vi) Descriptions of activities appropriate to the single-family market, to be included by applicants who wish to emphasize marketing to the prospective home purchaser. Such activities may include:

(A) Testing appropriate methods of involving local financial institutions under the aegis of the fair housing center in activities which will increase the sensitivity and awareness of such institutions and their professional staff about the impact of their lending and mortgage credit review practices upon properties and individuals located in lower-income and racially and ethnically impacted neighborhoods;

(B) Testing new methods of marketing to nontraditional home purchasers, *e.g.*, low-income families, persons with disabilities, and first-time home purchasers who desire to increase their knowledge of the responsibilities of homeownership;

(C) Testing a clearinghouse system geared toward referring prospective home purchasers to real estate

professionals who will assist them in navigating the home purchase process.

(3) A statement of work, a budget—which must include a realistic amount, not to exceed $2,000, in travel costs for financial management training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with these funds, the geographic areas to be served by the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities.

(4) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants.

(5) A description of the financial mechanisms to be used by the clearinghouse operator in addition to the federal funds to make the clearinghouse self-sustaining. Such a mechanism shall be reviewed and approved by the Department prior to the implementation of this lab.

(6) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities.

(7) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured. These possible benefits can include changes in racial, ethnic and income-related housing patterns that may have taken place during the testing period, increases in awareness and changes in lending, or sales and rental practices which result in fairer treatment for persons protected by civil rights statutes. Particular emphasis must be placed on measuring and comparing the costs and the benefits of the present system of HUD AFHM Plan processing and the clearinghouse concept being tested under this NOFA.

(8) A description of how the clearinghouse will be of continuing use in dealing with housing discrimination after the completion of the demonstration. In this section, the proposer shall explain how the clearinghouse plans to continue its existence after the expiration of this grant, describing the public and private sources of financing and the services which are both similar to and different from the services to be offered during the period of this grant.

(9) HUD Form 2880, Applicant Disclosures.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive and Legislative Branches of the federal government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities Form (SF–LLL).

V. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, inadequate budget data, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

(a) Are not necessary for HUD review under selection criteria/ranking factors; and

(b) Would not improve the substantive quality of the proposal.

VI. Other Matters

Section 504 Requirements

Recipients will be expected to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in federally assisted programs.

Prohibition Against Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of federal contracts, grants, cooperative agreements and loans exceeding $100,000 of a new prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free

workplace requirements in accordance with 24 CFR part 24, subpart F.

Section 102 HUD Reform Act Documentation and Public Access Requirements; Applicant/Recipient disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case generally for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 10, 1994.

Paul Williams,

General Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.

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Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Attachment

OMB Approval No. 2529-0013 (exp. 10/31/93)

1a. Applicant's Name, Address(including city, State and zip code) & Phone Number:

1c. Project/Application Number | 1d. Number of Units | 1e. Price or Rental Range From $ To $

1f. For Multifamily Housing Only ☐ Elderly ☐ Non-Elderly

1g. Approximate Starting Dates: Advertising: Occupancy:

1b. Project's Name, Location: (including city, State and zip code)

1h. County: | 1i. Census Tract:

1j. Managing/Sales Agent's Name & Address: (including city, State and zip code)

2. **Type of Affirmative Marketing Plan:** (mark only one)
☐ Project Plan ☐ Minority Area ☐ White (non-minority) Area
☐ Mixed Area (with _____ % minority residents)
☐ Annual Plan (for single-family scattered site units) **Note:** A separate Annual Plan must be developed for each type of census tract in which the housing is to be built.

3. **Direction of Marketing Activity:** (indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts)
☐ White (non-Hispanic) ☐ Black (non-Hispanic) ☐ Hispanic
☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander

4a. **Marketing Program: Commercial Media:** (Check the type of media to be used to advertise the availability of this housing)
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Billboards ☐ Other (specify)

Name of Newspaper, Radio or TV Station	Racial/Ethnic Identification of Readers/Audience	Size/Duration of Advertising

4b. **Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster:**
(1) Will brochures, letters, or handouts be used to advertise? ☐ Yes ☐ No If "Yes", attach a copy or submit when available.
(2) For project site sign, indicate sign size _____ x _____; Logotype size _____ x _____. Attach a photograph of project sign or submit when available.
(3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the
☐ Sales/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area or SMSA. If more space is needed, attach an additional sheet. Notify HUD-FHEO of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization:	Racial/Ethnic Identification:	Approximate Date:	Person Contacted or to be Contacted:

Address & Phone Number:	Method of Contact:	Indicate the specific function the Group/Organization will undertake in implementing the marketing program:

5. **Future Marketing Activities** (Rental Units Only) Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Brochures/Leaflets/Handouts
☐ Site Signs ☐ Community Contacts ☐ Other(specify)

6. **Experience and Staff Instructions:** (See instructions)
6a. Staff has experience. ☐ Yes ☐ No
6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations:** Attach additional sheets as needed.

8. **Changes and Revisions:** By signing this form, the applicant agrees, after appropriate consultation with HUD, to change any part of the plan covering a multifamily project to ensure continued compliance with Section 200.620 of HUD's Affirmative Fair Housing Marketing Regulations.
Signature of Person Submitting this Plan & Date of Submission:

Name: (type or print)

Title & Name of Company:

For HUD-FHEO Use Only

Approval By:	Disapproval By:
Signature & Date:	Signature & Date:
Name: (type or print)	Name: (type or print)
Title:	Title:

Previous Editions are Obsolete

form HUD-935.2 (10/92)
ref. Handbook 8025.1

Instructions

Send the Completed form to: Your Local HUD Office, Attention: Fair Housing and Equal Opportunity Director/Specialist

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these regulations carry out an affirmative program to attract prospective buyers or tenants of all minority and non- minority groups in the housing market area regardless of race, color, religion, sex or national origin. These groups include Whites (Non-Hispanic) and members of minority groups: Blacks (Non-Hispanic), American Indians/Alaskan Natives, Hispanics and Asian/Pacific Islanders in the Standard Metropolitan Statistical Areas (SMSA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin. The applicant shall describe on this form the activities it proposes to carry out during advance marketing, where applicable, and the initial sales or rent-up period. The affirmative program also should ensure that any group(s) of persons normally NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of housing in the SMSA price or other factors), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

Part 1 - Applicant and Project Identification. The applicant may obtain Census Tract location information, item 1i, from local planning agencies, public libraries and other sources of Census Data. For item 1g, specify approximate stating date of marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy. Item 1j is to be completed only if the applicant is not to implement the plan on its own.

Part 2 - Type of Affirmative Marketing Plan. Applicants for multifamily and subdivision projects are to submit a Project Plan which describes the marketing program for the particular project or subdivision. Scattered site builders are to submit individual annual plans based on the racial composition of each type of census tract. For example, if a builder plans to construct units in both minority and non- minority census tracts, separate plans shall be submitted for all of the housing proposed for both types.

Part 3 - Direction of Marketing Activity. Considering factors such as price or rental of housing, the racial/ethnic characteristics of the neighborhood in which housing is (or is to be) located, and the population within the housing market area, public transportation routes, etc., indicate which group(s) you believe are least likely to apply without special outreach.

Part 4 - Marketing Program. The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in the Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspapers/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the Plan, e.g., White (Non-Hispanic), Black (Non-Hispanic), Hispanic, Asian-American/Pacific Islander, American Indian/ Alaskan Native; and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the project area or the locality and that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, churches, labor unions, employers, public and private agencies, and individuals who are connected with these organizations and/or are well-known in the community.

Part 5 - Future Marketing Activities. Self-Explanatory.

Part 6 - Experience and Staff Instructions.

a. Indicate whether the applicant has previous experience in marketing housing to group(s) identified as least likely to apply for the housing.

b. Describe the instructions and training given to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan. Copies of any written materials should be submitted with the Plan, if such materials are available.

Part 7 - Additional Considerations. In this section describe other efforts not mentioned previously which are planned to attract persons in either those groups already identified in the Plan as least likely to apply for the housing or in groups nor previously identified in the Plan. Such efforts may include outreach activities to female-headed households.

Part 8 - The applicant's authorized agent signs and dates the AFHM Plan. By signing the Plan, the applicant assumes full responsibility for its implementation. The Department may at any time monitor the implementation of the Plan and request modification in its format or content, where the Department deems necessary.

Notice of Intent to Begin Marketing. No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant with an approved Affirmative Fair Housing Marketing Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the FHEO Division of the appropriate HUD Office serving the locality in which the proposed housing is located. OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the Plan. The burden hours for such notification are included in the total designated for this Affirmative Fair Housing Marketing Plan form.

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federal register

Thursday
June 16, 1994

Part IX

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992 (Pub. L. 102–325). Public Law 102–325 added new section 428J to the HEA which authorizes the Secretary to establish a demonstration program for loan forgiveness for certain types of professional or public service. Under section 428J of the HEA, the Secretary is authorized to forgive portions of Federal Stafford Loans incurred by a student borrower who performs volunteer service or works in certain teaching or nursing areas. Minor changes to section 428J were made by the National and Community Service Trust Act of 1993 (Pub. L. 103–82). Section 428J was also recently amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). Those additional statutory changes are also reflected in these regulations. This program is not currently funded.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of the information collection requirements in § 682.215. The information collection requirements in § 682.215 will become effective on July 1, 1995, or after these requirements have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published later in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U. S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: New section 428J of the HEA authorizes the Secretary to promulgate regulations to establish a loan forgiveness demonstration program in the Federal Stafford Loan Program. The purpose of the demonstration program is to encourage individuals to enter the teaching and nursing professions and to perform national and community service by offering partial Federal Stafford loan forgiveness. If funding is provided, the loan forgiveness program is available only to new borrowers who, as of October 1, 1989, had no outstanding debt on a FFEL Program loan.

On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 682 in the **Federal Register** (59 FR 9376). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Eligibility requirements for a borrower who wishes to qualify for loan forgiveness (page 9378);
- Application procedures for loan forgiveness (page 9378);
- Limitations of the loan forgiveness program (page 9378);
- Requirements for borrowers desiring loan forgiveness under the teaching, volunteer service or nursing categories (pages 9378–9379);
- Percentages of loan amounts eligible for forgiveness based on year of service completed (page 9379).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.215(c) Application

- The Secretary has defined September 1 as the earliest date in which a borrower can apply for loan forgiveness in addition to the October 1 deadline for submitting applications.
- The Secretary has clarified that borrowers who submit incomplete and inaccurate loan forgiveness applications will not be considered for loan forgiveness unless and until a completed application is submitted.

Section 682.215(i) Definitions

- The Secretary has expanded the definition of both "elementary school" and "secondary school" to include nonprofit private day or residential schools to be consistent with the definition for these terms in the Perkins Loan Program definitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

Section 682.215(a) General

Comment: Some commenters noted that there is no formal method specified in the regulations to inform borrowers about the loan forgiveness program. The commenters recommended that details be provided to borrowers in the application/promissory note or the disclosure statement. The commenters did not believe that lenders should be required to do a special mailing.

Discussion: The Secretary will ensure that guaranty agencies take steps to inform borrowers about the loan forgiveness program should the program be funded. These methods may include mention in the application/promissory note or disclosure statement or in public documents such as the Student Guide. Lenders will not be expected to publicize the program through a special mailing.

Change: None.

Comment: A commenter recommended that the definition of eligible borrower be clarified to convey that a borrower who had paid off an outstanding debt under the FFEL programs prior to October 1, 1989 would be eligible for the forgiveness program if the borrower became a "new" borrower with their first disbursement of a new FFEL program loan on or after October 1, 1989.

Discussion: The Secretary believes that the regulations convey that a borrower who has no outstanding debt under the FFEL programs as of October 1, 1989 would qualify as an eligible borrower.

Change: None.

Comment: A commenter asked if lenders would be required to produce a new repayment schedule for a borrower each year loan forgiveness is granted. The commenter also suggested that the percentages of loan forgiveness should

have no effect on the borrower's current payments.

Discussion: The Secretary does not believe that it is necessary for a lender to provide new repayment schedules to borrowers who receive loan forgiveness. The Secretary expects that the reduction of the loan amount owed by a borrower as a result of the loan forgiveness will most likely result in a reduction of the number of payments to be made by the borrower.

Change: None.

Comment: A commenter asked if all Federal Stafford loans were eligible for forgiveness under this demonstration program.

Discussion: The Secretary agrees that the regulations should be clarified to explain that subsidized, unsubsidized, and nonsubsidized Federal Stafford loans will be eligible for forgiveness under § 682.215.

Change: The final regulations have been revised to incorporate this clarification.

Comment: One commenter urged the Secretary to include loans made under the Federal Direct Student Loan Program to be eligible for the forgiveness program. The commenter believed that since the Omnibus Budget Reconciliation Act of 1993 stated that all terms and conditions under the Federal Stafford Loan Program, which include cancellation, deferment and other provisions, also apply to the Federal Direct Student Loan Program, Congress intended for the loan forgiveness program to be included as well.

Discussion: The Secretary agrees with the commenter that loans made under the Federal Direct Student Loan Program are eligible for the forgiveness program. Direct Loan regulations will specify Direct Loan borrowers' eligibility for loan forgiveness under this program.

Change: None.

Comment: Some commenters believed that the Secretary should provide timeframes and procedures by which to notify borrowers of their approval or denial of loan forgiveness eligibility. The commenters were also interested in knowing the timeframes and procedures that the Secretary will adopt to notify the holder regarding which borrowers will receive forgiveness and when the holder will be given the appropriate funds.

Discussion: The borrower will be informed of his or her eligibility for loan forgiveness by the Secretary in a timely manner. The Secretary will take appropriate steps to inform holders of proper procedures. However, the Secretary notes that without knowing the amount of appropriations, if any, that might be available for the forgiveness program and the potential number of recipients, it is impossible to define those methods in these regulations.

Change: None.

Comment: Some commenters expressed concern about borrower confusion regarding the borrower's repayment obligation if the borrower is eligible for loan forgiveness. The commenters were worried about the period of time between when a borrower applies for loan forgiveness and the holder's receipt of the loan forgiveness payment from the Secretary. The commenters wanted to know how the servicer would be notified that the borrower's loan or loans are eligible for loan forgiveness and whether the borrower would be required to continue to make regular monthly payments in the time period between the loan forgiveness application submission and payment from the Secretary.

Discussion: The Secretary recognizes the potential problems created by this structure. Because this program is not an entitlement, the Secretary cannot promise an otherwise eligible borrower that funding will be available to award a percentage of loan forgiveness. Therefore, the Secretary reminds the commenters that the borrower is still in repayment on his or her loan, regardless of eligibility for the loan forgiveness unless he or she is in an authorized deferment or forbearance period.

Change: None.

Comment: One commenter wanted to know if a borrower could participate in both a state forgiveness program as well as this demonstration program.

Discussion: Although the National and Community Service Act of 1990 (42 U.S.C. 12571 *et seq.*) precludes a borrower from receiving a loan cancellation benefit under both that program and this loan forgiveness program, the Secretary believes that a borrower participating in the loan forgiveness program under § 682.215 is eligible to participate in state forgiveness programs, where allowable by the state.

Change: None.

Section 682.215(b)

Comment: Some commenters believed that in the instances where a defaulted borrower made satisfactory repayment arrangements on the loans in default, a borrower should be allowed to have those defaulted loans forgiven as well. The commenters believed that if the motivation behind the demonstration program was to encourage borrowers to enter into public service, then defaulted borrowers could be further enticed into public service by being allowed to "work off" their defaulted loans as well as those not in default.

Discussion: This issue was thoroughly discussed at the negotiated rulemaking sessions that preceded publication of the NPRM. Given that there may be limited or no funding for this program, the Secretary felt that it would be inappropriate to provide this benefit on loans that are still in default.

Change: None.

Comment: A commenter recommended that the Secretary and the guaranty agencies establish a way to easily verify that satisfactory repayment arrangements had been made on a loan that is to be considered eligible for loan forgiveness.

Discussion: The Secretary encourages guaranty agencies to provide appropriate information to lenders regarding a borrower's loan status. Additionally, the Secretary anticipates that the National Student Loan Data System will assist in providing this type of information.

Change: None.

Comment: Two commenters recommended that the Secretary should encourage guaranty agencies to consider those borrowers who have defaulted on their loans but are likely to be eligible for loan forgiveness to be good candidates for a rehabilitated loan.

Discussion: The Secretary believes that it is illogical to conclude that eligibility for one program assures eligibility for another. The loan rehabilitation program has specific requirements separate from the forgiveness program.

Change: None.

Comment: One commenter requested that the Secretary clarify that defaulted loans that have been rehabilitated should be eligible for forgiveness.

Discussion: The Secretary agrees with the commenter. Once a loan has been rehabilitated it is no longer in default and is therefore considered to be eligible for forgiveness under this program.

Change: The final regulations have been revised to incorporate this clarification.

Section 682.215(c)

Comment: Three commenters urged the Secretary to develop a standardized loan forgiveness application form that includes such data items as borrower dates of service, loan balance information, eligibility, and interest amounts in order to simplify the process.

Discussion: The Secretary agrees and is committed to consulting with FFEL participants to develop a standardized

application form pursuant to the requirements of section 432(1) of the HEA.

Change: None.

Comment: One commenter questioned to whom the term "designee" in § 682.215(c) refers. The commenter also recommended that the Secretary provide the designee with a means by which to identify and verify that a certain type of facility, tax-exempt organization or teacher shortage area meets the criteria of § 682.215. The commenter suggested that a more suitable alternative would be to require the certifying official to certify that the organization meets the requirements of § 682.215.

Discussion: The term "designee" refers to the departmental official assigned with implementing this program. The Secretary will provide the designee with all necessary information at the appropriate time if necessary. The Secretary notes that the NPRM provided that the certifying official in each category of forgiveness certify that the borrower's service meets the requirements of § 682.215.

Change: None.

Comment: In considering the October 1 deadline for submitting forgiveness applications, some commenters recommended that the regulations define a specific timeframe as to the earliest date an application for forgiveness may be received. They reasoned that since funding for this program may be limited and will be awarded on a first-come, first-served basis, applicants should be informed of the first date upon which they can apply. The commenters also wished to know whether a borrower need complete the service prior to applying for forgiveness or merely have completed service before the October 1 deadline.

Discussion: The Secretary agrees with the commenters that a borrower should be informed of the first date on which a forgiveness application can be received. A borrower's application for forgiveness should be postmarked no earlier than September 1 of each year that forgiveness is requested. The Secretary has chosen the September start date in order to be fair to all categories of borrowers, since certain professions have more definitive begin and end dates or terms that may end in June or July that would give them an advantage over other borrowers if the earliest date to apply was July or August. The Secretary also believes that it is appropriate to require that the service be completed prior to the borrower's submission of an application for forgiveness. This would result in fair treatment to the greatest number of borrowers and would eliminate the need to confirm that the borrower completed the service.

Change: The final regulations have been revised to include September 1 as the earliest date for forgiveness applications to be received.

Comment: A commenter asked if applications for forgiveness should be routed through the lender or guaranty agency or directly to the Secretary.

Discussion: Applications for loan forgiveness should be directed to the Secretary.

Change: None.

Comment: Some commenters felt that there should be a provision whereby a borrower who qualified for forgiveness one year but did not receive it due to limited funding should be first to be considered for forgiveness the following year. The commenters also wanted to know if a borrower who qualified and received the forgiveness one year would be automatically eligible for the following year's forgiveness.

Discussion: This approach was discussed at the negotiated rulemaking sessions. The Secretary believes that given the limited amount of funding, there is no statutory basis to allow eligible applicants from one year to automatically qualify for the next year. Similarly, borrowers who were denied forgiveness due to lack of funding one year will not be given priority over the next year's applicants. Borrowers are required to reapply for each year for which they wish to receive the forgiveness benefit.

Change: None.

Comment: Some commenters wanted to know how to treat a borrower's incomplete forgiveness application. The commenters asked whether a borrower should be disqualified, or if allowed to provide the missing information, how much time should a borrower have to submit the information. They also wanted to know if the borrower's first-come, first-served status would be affected by submitting an incomplete application.

Discussion: An incomplete or inaccurate application will not qualify a borrower for receiving loan forgiveness. However, the Secretary will attempt to notify the borrowers who submit inaccurate or incomplete applications so that they will have an opportunity to complete and submit a complete application by the October 1 deadline.

Change: None.

Comment: A number of commenters expressed confusion over the treatment of borrowers with regard to forbearance. Some commenters questioned whether forbearance for eligible borrowers under the forgiveness program was necessary or administratively feasible.

Discussion: The Secretary reminds the commenters that all borrowers who request forbearance while they are serving in areas that would qualify for forgiveness are entitled to forbearance as stated in section 428J. The ability to obtain forbearance is based on the borrower's being engaged in qualifying service and is not dependent on whether the borrower actually receives the loan forgiveness.

Change: None.

Comment: Some commenters asked when a borrower could request forbearance since the borrower does not apply for forgiveness until after the year of service has been completed. The commenters questioned whether forbearance would be granted retroactively at the time the borrower applied for forgiveness or if the lender or servicer would be expected to grant forbearance to a borrower the year prior to application while the borrower was serving in an eligible position. The commenters felt that the wording of the NPRM regarding forbearance may be confusing for a borrower who may think that payments do not have to be made during the period of service. The commenters also wished to know if the forbearance applied only to the loans eligible for forgiveness or on all loans.

Discussion: The Secretary wishes to emphasize that the holder or servicer is to grant forbearance to a borrower upon the borrower's request while the borrower is serving in one of the categories of service eligible for forgiveness under § 682.215. A borrower shall receive forbearance while serving regardless of whether sufficient funding is available for forgiveness at the end of that year of service. The forbearance will apply to all loans held by the borrower that would normally be entitled to forbearance. A borrower who is not in an authorized deferment or forbearance status while serving is expected to follow the terms of the promissory note regarding repayment.

Change: None.

Comment: Some commenters recommended that all borrowers in qualifying service that wish to apply for forbearance be given explicit instruction as to the terms of the forbearance and the fact that receiving forbearance for service under § 682.215 was not related to receiving loan forgiveness for performing qualifying service. The commenters were concerned that a borrower would be incurring additional costs with a forbearance with the potential of not receiving the loan forgiveness benefit for performing qualifying service.

Discussion: The Secretary shares the concerns of the commenters and expects holders to provide information on the option of forbearance under this program as is required under the FFEL programs. The holders will inform borrowers that funding, if available for this program, is limited and that receiving a forbearance during qualifying service does not guarantee loan forgiveness under this program and as such may result in additional costs to the borrower.

Change: None.

Section 682.215 (e), (f), and (g)

Comment: Some commenters asked that the Secretary clarify that a borrower must apply for forgiveness each year following the year of qualifying service in the teaching, volunteer and nursing categories.

Discussion: The Secretary anticipates that some eligible borrowers may have completed qualifying service in previous years that would not be immediately preceding the time in which they apply for this program. In this situation, the Secretary envisions that a borrower would need to indicate the begin and end date of the year of service, as all other eligible borrowers are required to do. Loan forgiveness, if funding is available, would be at the level based on which year the borrower last received forgiveness. For example, a borrower who qualified and received the benefit for the first year of service, but not the second year, who now qualifies for forgiveness for the third year of service would receive the benefit as a second year participant in the forgiveness program.

Change: The final regulations have been revised to clarify that a borrower must apply each year to obtain loan forgiveness under this demonstration program.

Section 682.215(h)

Comment: Some commenters asked whether all Federal Stafford loans are eligible for loan forgiveness. They recommended that if all Federal Stafford loans are eligible the Secretary should specify how the holder should apply the forgiveness amounts.

Discussion: The Secretary clarifies that unsubsidized, subsidized and nonsubsidized Federal Stafford loans are eligible for this forgiveness program and that the holder should apply the forgiveness amounts first to the unsubsidized portion, followed by the subsidized and then the nonsubsidized portion of the loans.

Change: The final regulations have been revised in both § 682.215(a) and § 682.215(h) to incorporate this clarification.

Comment: Some commenters are worried that holders and servicers do not link individual loans to the specific academic years when the borrower was in school and will therefore be unable to identify which years constitute the borrower's last two years of undergraduate education or two-year period when the borrower was obtaining a post graduate teaching or additional teaching certificate.

Discussion: The Secretary believes that holders and servicers are able to track loan amounts for this purpose because numerous existing program requirements already require such tracking. Loans are made based on statutory annual loan limits for applicable undergraduate and post baccalaureate academic levels. This data is available on a loan-by-loan basis for each borrower in lender and guaranty agency systems and should be sufficient for purposes of implementing these provisions.

Change: None.

Section 682.215(h)(5)

Comment: A commenter objected to the provision in the NPRM that states that payments eligible for forgiveness under this program that were already repaid by the borrower will not be refunded. The commenter noted that a prudent borrower may choose not to risk the additional costs of forbearance given the questionable funding for this program and continue to repay the loan, perhaps resulting in paying a loan amount that could have been forgiven but is now not eligible.

Discussion: The statute does not authorize the refunding of any repayment of a Federal Stafford loan.

Change: None.

Section 682.215(i)

Comment: A commenter recommended that the term "secondary school" should not include education beyond the twelfth grade. The commenter stated that this definition conflicts with the commonly recognized definition of postsecondary education in many states and thus may confuse those involved in postsecondary education.

Discussion: This definition was taken from already existing FFEL program regulations.

Change: None.

Comment: One commenter objected to the Secretary limiting the teaching forgiveness provision to borrowers who teach in public elementary and secondary schools. The commenter pointed out that section 428J provides forgiveness for those borrowers who teach full time in a school that qualifies under section 462(a)(2)(A) of the HEA for loan cancellation for Perkins loan recipients. The commenter noted that under the Perkins Loan Program, cancellation is provided for full-time teachers in nonprofit private elementary schools as well. The commenter requested that the Secretary make the definitions of elementary school and secondary school consistent with the Perkins definitions.

Discussion: The Secretary agrees with the commenter.

Change: The final regulations have been revised to include nonprofit private schools in the elementary school and secondary school definitions. This change allows those serving in these types of schools to be eligible under the teaching forgiveness category of § 682.215(e).

Comment: A commenter suggested that the Secretary expand the definitions that pertain to the nursing category of loan forgiveness. The commenter asked that the Secretary broaden the eligibility of sites to encourage more nursing graduates to participate in the forgiveness program.

Discussion: The Secretary consulted with the Secretary of Health and Human Services (HHS) in determining the definitions that would apply to the facilities described in section 428J in which a borrower would be employed full-time as a nurse. These definitions were taken from HHS and other existing regulations. The statute indicates that the Secretary is to rely on the expertise of HHS in these areas. Accordingly, there will be no change.

Change: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 10, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new § 682.215 is added to read as follows:

§ 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of unsubsidized, subsidized and nonsubsidized Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower worked in those professions or performed that service. For purposes of this section, an eligible borrower is a borrower who, as of October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she was employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or was serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or was performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, *full-time* means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default. Federal Stafford loans that have been rehabilitated are eligible for forgiveness.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary each year following a completed year of service, but no earlier than September 1 and no later than October 1 of a given year. The application must be in writing, on a form provided by the Secretary and according to procedures established by the Secretary. An eligible borrower must complete a year of service prior to filing a loan forgiveness application with the Secretary. Eligible borrowers are chosen on a first-come, first-served basis to participate and must receive forbearance upon request for each year of service for which forgiveness is requested. An eligible borrower must reapply each year to receive the forgiveness benefit. Incomplete or inaccurate applications are not considered in the first-come, first-served process. If a borrower initially submits an incomplete or inaccurate application, the borrower must provide a completed application to the Secretary or his designee prior to consideration in the selection process.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must have taught full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher has taught in a teacher shortage area if—

(i) The teacher taught in a school that satisfied the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher taught mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determined there was a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching—

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the State educational agency the borrower taught; and

(C) Verifying that the borrower taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(f) *Borrower eligibility; volunteer service forgiveness.* (1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must have served as a full-time volunteer for at least a year (defined as twelve consecutive months) under—

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performed service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower did not receive compensation that exceeds the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must—

(i) Have worked for an organization that provides services to low income persons and their communities to assist

them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, have given religious instruction, conducted worship services, engaged in religious proselytizing, or engaged in fund-raising to support religious activities.

(3) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested under paragraphs (f)(1), (f)(2), or (f)(3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower worked certifying—

(i) That the borrower served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must have been employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement from an authorized official where the borrower was employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower for—

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Federal Stafford loans for each of the first two years in which the borrower is awarded the benefit and meets the requirements of this section.

(ii) 20 percent of the total original principal amount for each of the third and fourth years.

(iii) 30 percent of the total original principal amount for the fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) Payments made by the Secretary must be applied first to the unsubsidized Federal Stafford portion of the loan, followed by the subsidized Federal Stafford portion, and then the nonsubsidized Federal Stafford portion.

(5) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(6) Payments received from a borrower who qualifies for loan forgiveness under this section may not be refunded.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public or nonprofit private day or residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments.

This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub.L. 100–579)—

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)—

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that—

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with

one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2, and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public or nonprofit private day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087–2)

[FR Doc. 94–14593 Filed 6–15–94; 8:45 am]

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federal register

Thursday
June 16, 1994

Part X

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, 2611 MS/MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 25, 1993 in satisfaction of the award granted to the Gila River Indian Community before the United States Court of Federal Claims in Docket 236–N. The plan for the use of the funds was submitted to Congress with a letter dated January 24, 1994 and was received (as recorded in the Congressional Record) by the Senate on February 7, 1994 and by the House of Representatives on January 25, 1994. The plan became effective May 9, 1994 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

for the Use of the Gila River Indian Community Judgment Funds in Docket No. 236–N before the United States Claims Court

The funds appropriated January 25, 1993 in satisfaction of the award granted in Docket No. 236–N to the Gila River Indian Community before the U.S. Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

The Secretary of the Interior ("Secretary") shall make a per capita distribution of eighty percent (80%) of the principal, interest, and investment income accrued, in a sum as equal as possible, to each member of the Gila River Pima-Maricopa Indian Community, born on or prior to and living on the effective date of this plan. Any remaining amount, after the per capita payment to the members, shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Twenty percent (20%) of the principal, interest and investment income accrued shall continue to be invested with the interest to be available to the community's general fund on an annual budgetary basis to be used for operation of community programs.

If at some future date, the Gila River Indian Community decides to amend this Plan, the Plan may be amended with the approval of the Secretary.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programming or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Hilda A. Manuel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–14630 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part XI

Department of the Interior

Fish and Wildlife Service

50 Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 222

Endangered and Threatened Wildlife and Plants; Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 101–8AC38

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 921233–2333; I.D. 011394B]

Endangered and Threatened Wildlife and Plants; Final Rule to Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife

AGENCIES: Fish and Wildlife Service (Service), Interior, and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Service is amending the List of Endangered and Threatened Wildlife and Plants (List) by revising the entry for the gray whale (*Eschrichtius robustus*) to remove the eastern North Pacific (California) population from the List while retaining the western North Pacific (Korean) population as endangered. In addition, the NMFS is amending its list of endangered species under NMFS jurisdiction. These actions correspond to a determination by NMFS, and concurrence by the Service, that the eastern North Pacific population of the gray whale should be removed from the List. The eastern North Pacific population has recovered to near its estimated original population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. The Service and NMFS believe that the western North Pacific gray whale population, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

EFFECTIVE DATE: June 16, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, at the above NMFS address (telephone 301/713–2055), or Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ–452, Washington, D.C. 20240 (telephone 703/358–2171).

SUPPLEMENTARY INFORMATION: The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), is administered jointly by the Service and NMFS. NMFS has jurisdiction over most marine species, including whales, and makes determinations under section 4(a) of the Act as to whether a species should be listed as endangered or threatened. Reclassification of listed species from endangered to threatened and removal of species from the List require concurrence by the Service with the NMFS determination. The Service maintains and publishes the List, codified at 50 CFR 17.11 and 17.12, for all species determined by the Service or NMFS to be endangered or threatened.

On January 7, 1993 (58 FR 3121), NMFS published a final notice of determination that the eastern North Pacific (California) stock (population) of gray whale has recovered to near its estimated original population size and, while individual and cumulative impacts may have the potential to adversely affect the eastern population, that population is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS determined, therefore, that the eastern North Pacific population of the gray whale should be removed from the List under the Act. NMFS also determined that the western North Pacific gray whale stock, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

NMFS conducted a comprehensive evaluation of the status of the species in terms of the factors contained in section 4(a)(1) of the Act for listing and delisting actions, and provided an extensive public comment period on its proposed determination (56 FR 58869; November 22, 1991). The Service has reviewed the complete administrative record regarding this action and finds that the determination is well based and concurs that the eastern North Pacific population should be removed from the List. Therefore, in accordance with section 4(a)(2) of the Act, the Service is amending the List by revising the entry for the gray whale to remove the eastern North Pacific (California) population, while retaining the western North Pacific (Korean) population as endangered. A list of endangered species under the jurisdiction of NMFS is contained in 50 CFR part 222. Therefore, concurrent with the Service's regulatory action, NMFS is amending § 222.23(a) to correspond with the amendment of § 17.11(h).

This final rule is issued under 50 CFR parts 17 and 222 and is not subject to Office of Management and Budget review under E.O. 12866. Because this rule implements a determination previously subject to notice and comment and will relieve an existing restriction, the Service Director and the Assistant Administrator for Fisheries, NOAA, under section 553(b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), for good cause, find that it is unnecessary to provide additional notice and public comment on this rule or to delay for 30 days its effective date.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act (NEPA) of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the reasons for this determination was published by the Service in the **Federal Register** on October 25, 1983 (48 FR 49244).

As amended in 1982 (Public Law 97–304), the Act, in section 4(b)(1)(A), restricts the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

List of Subjects in 50 CFR Parts 17 and 222

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, and part 222, subchapter C of chapter II, title 50 of the Code of Federal Regulations, are amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the table entry for "Whale, gray" in the "Species" column under the heading for MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Whale, gray	*Eschrichtius robustus.*	North Pacific Ocean: coastal and adjacent seas. Formerly North Atlantic Ocean.	Entire, except eastern North Pacific Ocean: coastal and Bering, Beaufort, and Chukchi Seas.	E	3,536	NA	NA
*	*	*	*	*	*		*

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1544.

§ 222.23 [Amended]

2. Section 222.23(a) is amended by removing the words "Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*))" in the second sentence and adding in their place the words "Western North Pacific (Korean) gray whale (*Eschrichtius robustus*)".

Dated: February 28, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: March 9, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–14113 Filed 6–15–94; 8:45 am]

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federal register

Thursday
June 16, 1994

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Temporary Flight Restrictions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26605; Notice No. 91–14]

RIN 2120–AD–55

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: This document withdraws a proposal to amend the Federal Aviation Regulations to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions (TFR) to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. The objective of the NPRM was to increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations. The FAA has carefully considered all of the comments received in response to the NPRM and as a result has concluded that safety in TFR's can be increased through procedural versus regulatory means. Accordingly, the NPRM is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1991, the FAA published Notice No. 91–14 (56 FR 34000). The NPRM proposed amending § 91.137(c)(5) of the Federal Aviation Regulations (FAR) to require that: (1) All pilots of aircraft carrying properly accredited media personnel initially contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge. Currently, when TFR's are established for the purpose of providing a safe environment for the operation of disaster relief aircraft, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval, provided a flight plan has been filed. However, the aircraft must be operated above the altitude(s) being used by rescue or disaster relief aircraft. The process a pilot uses to determine which altitudes are being utilized is not prescribed in the current regulation.

Discussion of Comments

Thirty-one comments were received in response to the NPRM (the comment period closed September 23, 1991). Most commenters supported the goal of the NPRM to promote increased air traffic safety in TFR's; however, the best means to accomplish this was disputed.

Several commenters recommended that a common disaster frequency be established for all aircraft. Other commenters expressed concern over the potential inability of media aircraft to communicate with emergency ground officials, suggesting that on-scene ground officials be required to possess an aircraft compatible two-way radio. Suggestions were made to require pilot monitoring of the frequency while in the disaster area. Finally, suggestions were made to incorporate this proposed rule into the Airman's Information Manual rather than add it to the FAR.

The FAA recognizes the potential merit of this proposal and acknowledges the validity of the express concerns. Since this NPRM was published, the FAA has been reviewing regulations and procedures currently utilized for temporary flight restrictions.

In addition to aircraft carrying news media encountering difficulties in determining the altitude being used by disaster relief aircraft, other TFR problems have been cited. These problems include pilots being unable to receive the location of a TFR area in a timely manner; aircraft on instrument flight rules (IFR) flight plans and military aircraft on IFR training routes intruding into the TFR; the large number of aircraft in TFR's implemented for an incident or event generating a high degree of public interest; and the untimely process used to put TFR's in place, particularly when they involve critical situations such as toxic spills. In addition, of the 13 documented incidents in TFR's, only 2 were confirmed to be aircraft carrying news media. The other incidents involved general aviation aircraft or military aircraft that inadvertently penetrated the TFR's. The reason most often given was lack of information about the existence of the TFR and the inability to positively identify the TFR location.

Reasons for Withdrawal

Based on the comments received in response to Notice No. 94–14, and the additional data as stated above, the FAA has determined that there is inadequate justification to pursue further this regulatory action. The FAA has determined that additional study of current TFR procedures, which may include parts of Notice No. 91–14, is necessary. Therefore, it is in the best interest of all concerned to withdraw Notice No. 91–14.

The Decision and Withdrawal

Accordingly, the FAA concludes that further rulemaking on Notice No. 91–14 should not proceed at this time. Therefore, Notice No. 91–14 is withdrawn. This action does not preclude the FAA from considering similar proposals in the future or commit it to any further or future course of action on this subject.

The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq: E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington DC on June 8, 1994.

Harold W. Becker,

Acting Director, Air Traffic, Rules and Procedures Service.

[FR Doc. 94–14679 Filed 6–15–94; 8:45 am]

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